

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

WILLIAM A. KRIEGER,

Petitioner,

v.

Case No. 05-C-564

JODINE DEPPISCH and
PETTY A. LAUTENSCHLAGER,

Respondents.

OPINION AND ORDER

William Krieger has filed a notice of appeal and has requested a certificate of appealability. This court dismissed Krieger's Petition for a writ of habeas corpus on August 9, 2005. The Respondent had filed a motion to dismiss on July 11, 2005, and the Petitioner had failed to respond by the time the court dismissed the Petition on August 9, 2005. The Petitioner, who is represented by counsel, believes that he had thirty days to respond to the motion, but the motion was clearly captioned "Motion to Dismiss," and, as such, was subject to the twenty-one day response time set forth in Civil Local Rule 7.1(b). Krieger did not cure his default by filing a brief or other papers and did not file a motion to reconsider.

Because the Petitioner's request for a certificate of appealability does not make a substantial showing of the denial of a constitutional right, the court ORDERS that Krieger's "Request for Certificate of Appealability of the District Court's Dismissal of

Habeas Corpus for Untimeliness" (filed August 29, 2005) IS DENIED. See 28 U.S.C. § 2253.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 31st day of August, 2005.

s/Thomas J. Curran
THOMAS J. CURRAN
United States District Judge